

REDACTED

BOARD OF MEDICAL QUALITY ASSURANCE
DIVISION OF MEDICAL QUALITY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the matter of the Accusation
Against:

DANIEL BURR LEIVA, M.D.
20392 Town Center Lane
Cupertino, California
License No. A-16211

NO. D-1558

N 5534

Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Division of Medical Quality, Board of Medical Quality Assurance, as its Decision in the above-entitled matter.

The Decision shall become effective on April 7, 1976.

IT IS SO ORDERED March 8, 1976.


HARRY A. OBERHELMAN, JR., M.D.

BEFORE THE BOARD OF MEDICAL QUALITY ASSURANCE
DIVISION OF MEDICAL QUALITY
OF THE STATE OF CALIFORNIA

In the Matter of the Accusation)

against)

DANIEL BURR LEIVA, M.D.)
20392 Town Center Lane)
Cupertino, California)
License No. A-16211)

NO. D-1558

N 5534

Respondent.)

PROPOSED DECISION

The above-entitled matter came on for hearing upon a First Amended Accusation before George R. Coan, Administrative Law Judge, Office of Administrative Hearings, at San Francisco, California, on September 15, 1975. Charles W. Getz, IV, Deputy Attorney General, represented the Board of Medical Quality/ Assurance, Respondent Daniel B. Leiva, M.D., was represented by Frederick A. Cone, Attorney at Law. It was stipulated that the Second Cause for Disciplinary Action be dismissed and respondent stipulated to the truth of the allegations of the First Cause for Disciplinary Action and the order to be proposed. No evidence was received. After reviewing the stipulation, the Administrative Law Judge on November 3, 1975, set the matter for further hearing for the purpose of taking evidence to justify the stipulation. On November 21, 1975, a further hearing was held and evidence both oral and documentary was received.

Pursuant to the stipulation and evidence received, the Administrative Law Judge proposes the following decision:

I

Raymond Reid made the First Amended Accusation in his official capacity as the Executive Secretary of the Board of Medical Examiners of the State of California.

II

Daniel Burr Leiva, M.D., received license No. A-16211 on or about February 4, 1955; said license being in full force and effect at all times mentioned hereinafter. There have been no prior disciplinary actions taken on this license.

III

On or about June 7, 1974, in Superior Court of the State of California, Santa Clara County, in Action No. 57252, respondent Daniel Burr Leiva, M.D., was convicted of violating Section 484 of the Penal Code, grand theft, a felony; Section 72 of the California Penal Code, presenting false claims; and Section 14107 of the Welfare and Institutions Code, fraudulent claims, in that between the periods of approximately February 15, 1971, and November 22, 1971, said defendant wilfully and feloniously took public moneys of the State of California, and further, on or about May 31, 1973, respondent presented for payment to the State Board of Health, false and fraudulent claims for repayment for psychiatric treatments of Angelina C [REDACTED] and Florence C [REDACTED].

IV

Pursuant to the stipulation, the Second Cause for Disciplinary Action is dismissed.

V

In the event the stipulation and this proposed decision Assurance, are not adopted by the Board of Medical Quality/ the matter shall be set down for a full hearing and the stipulation cannot be used as an admission in such hearing.

VI

Respondent introduced evidence which established the following:

1. He graduated from the University of California, Berkeley, in 1948 and received his M.D. from Boston University in 1953. He took his internship in general medicine at Wadsworth Hospital in Los Angeles and his residency in general practice and internal medicine in 1954 at the Kern County General Hospital. In 1959 he completed his residency in psychiatry at Langley-Porter in San Francisco. He was a research fellow of the U. S. Public Health for one year.

In 1960, he became a senior psychiatrist at the Atascadero State Hospital where he was promoted to assistant superintendent supervising six to eight M.D.'s and had responsibility for 800 patients. He held this latter position for four years.

He then became assistant program chief in the Contra Costa County Health Program for one year.

He then went into private practice in Santa Clara County and served as a consultant for the Bureau of Social Work, Santa Clara County between 1967 and 1972.

He is presently employed at the Santa Clara County Mental Health at the East Valley Center. In addition he sees three to four

private patients three afternoons a week, charging \$35 to \$50 per visit.

He was at one time employed in the Pauling Institute and now does consulting work for them.

2. Respondent's convictions arose out of his charging Medi-Cal for situations where patients either cancelled or failed to appear for counselling sessions and charging for a full half hour visit when he spent less than 15 minutes with the patient. An auditor for the Department of Health has estimated the overcharges between 1967 and 1973 total \$16,729.63.

3. His gross income since 1969 is as follows:

1969	\$52,954
1970	54,183
1971	53,306
1972	46,788
1973	44,417

During these years 55% to 60% of his total income was derived from Medi-Cal. He claims that there is \$30,000 uncollected and outstanding from Medi-Cal.

4. He received a sentence of one to ten years in State Prison and actually served nine months. On June 6, 1975, he was placed on a work furlough program and is now on parole.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of the issues presented:

Respondent has been convicted of crimes involving moral turpitude which is grounds for disciplinary action pursuant to Business and Professions Code Sections 2361(a) and 2383.

* * * * *

WHEREFORE, the Administrative Law Judge proposes the following order:

Imposition of discipline is suspended and respondent placed on probation for a period of five (5) years upon the following terms and conditions:

(a) Respondent shall comply with all the laws to which he is subject and all rules and regulations of the Board of Medical Assurance Quality/ of the State of California;

(b) Respondent shall report in person to the Board of Medical Assurance Quality/ at its annual meeting held in San Francisco, California, commencing in 1976 and for each year thereafter during said period of probation;

(c) Respondent shall initiate and submit to the Board of Medical Quality Assurance at quarterly intervals, an affidavit to the effect that he has fully and faithfully complied with all the terms and conditions of probation imposed herein;

(d) Respondent shall give an account of himself when visited by any representative of the Board including the Probation Surveillance Officer;

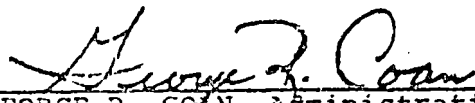
(c) Respondent, within three (3) years after the effective date of this decision, make restitution to the State of California the sum of \$3,000 as ordered by the Department of Health in Case No. 1632/120/43. Respondent has the responsibility of satisfying the Board that such payment has been made.

Upon full compliance with the aforesaid terms and conditions, and upon expiration of the period of probation herein set forth, respondent's license shall be fully restored, free and clear of said terms and conditions. In the event, however, respondent violates any one or more of said terms and conditions, then the Board may, after notice to respondent and after first providing him with an opportunity to be heard, set aside the suspension of the imposition of discipline, and, in its discretion, suspend or revoke respondent's license and/or make additional conditions of probation and/or extend the period of probation herein, as it deems just and appropriate.

I hereby certify that the foregoing constitutes my Proposed Decision in the above-entitled matter as the result of

a hearing held before me at San Francisco, California, on September 15, 1975, and on November 21, 1975, and I hereby recommend its adoption as the decision of the Board of Medical Quality/Assurance of the State of California.

DATED: January 13, 1976



GEORGE R. COAN, Administrative Law Judge

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 Attorney General
 2 CHARLES W. GETZ IV
 Deputy Attorney General
 3 6000 State Building
 San Francisco, California 94102
 4 Telephone: (415) 557-0721

5 Attorneys for the Board of
 6 Medical Examiners

7
 8 BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE
 9 STATE OF CALIFORNIA
 10

11 In the Matter of the Accusation
 12 against

13 DANIEL BURR LEIVA, M. D.
 20392 Town Center Lane
 14 Cupertino, California
 License No. A-16211

No. D-1558

FIRST AMENDED ACCUSATION

15 Respondent.
 16

17 RAYMOND REID charges and alleges as follows:

18 1. That he is the Executive Secretary of the Board of
 19 Medical Examiners of the State of California and makes this
 20 accusation in his formal capacity.

21 2. That Daniel Burr Leiva, M.D., received license
 22 number A-16211 on or about February 4, 1955; said license being in
 23 full force and effect at all times mentioned hereinafter. There
 24 have been no prior disciplinary actions taken on this license.

25 FOR A FIRST CAUSE FOR DISCIPLINARY ACTION

26 3. On or about June 7, 1974, in Superior Court of the
 27 State of California, Santa Clara County, in action No. 57252, re-
 28 spondent Daniel Burr Leiva, M.D., was convicted of violating
 29 section 484 of the Penal Code, grand theft, a felony; section 72
 30 of the California Penal Code, presenting false claims; and section
 31 14107 of the Welfare and Institutions Code, fraudulent claims, in

1 that between the periods of approximately February 15, 1971, and
2 November 22, 1971, said defendant wilfully and feloniously took
3 public moneys of the State of California, and further, on or
4 about May 31, 1973, respondent presented for payment to the State
5 Board of Health, false and fraudulent claims for repayment for
6 psychiatric treatments of Angelina C [REDACTED] and Florence
7 C [REDACTED].

8 4. The conviction alleged in Paragraph 3 above consti-
9 tutes grounds for disciplinary action pursuant to sections 2361(e)
10 and 2383 of the Business and Professions Code.

11 FOR A SECOND CAUSE FOR DISCIPLINARY ACTION

12 5. Respondent has not complied with the laws of the
13 State of California and specifically with the regulations of the
14 Department of Health (formerly the Department of Health Care
15 Services) enacted pursuant thereto, in that respondent has
16 knowingly presented for payment false and fraudulent claims for
17 the purpose of obtaining greater compensation than that to which
18 he was legally entitled in violation of section 14107 of the
19 Welfare and Institutions Code, and also that he has submitted
20 claims to the Fiscal Intermediary for the Department for services
21 not rendered to Medi-Cal beneficiaries in violation of section
22 51470(a) of the California Administrative Code, Title 22, acts
23 involving moral turpitude and dishonesty.

24 6. The following specific incidents comprise violations
25 of the aforesaid statutes and regulations:

26 A. A service report dated May 6, 1970, signed
27 by respondent, representing a claim for one
28 hour individual psychotherapy provided to
29 Marilyn W [REDACTED] on April 24, 1970, was sub-
30 mitted to the Fiscal Intermediary for pay-
31 ment. The patient was scheduled for 15

1 minutes treatment and was seen for less than
2 30 minutes.

3 B. A service report dated June 7, 1970, signed
4 by respondent, representing a claim for one
5 hour individual psychotherapy provided to
6 Marilyn W. on May 29, 1970, was submitted
7 to the Fiscal Intermediary for payment. The
8 patient was scheduled for 30 minutes treat-
9 ment and was seen for less than 30 minutes.

10 C. A service report dated September 7, 1970,
11 signed by respondent, representing a claim
12 for one hour individual psychotherapy pro-
13 vided to Marilyn W. on August 26, 1970,
14 was submitted to the Fiscal Intermediary for
15 payment. The patient was scheduled for 30
16 minutes treatment and was seen for less than
17 30 minutes.

18 D. A service report dated October 6, 1970,
19 signed by respondent, representing a claim
20 for one hour individual psychotherapy pro-
21 vided to Marilyn W. on September 23, 1970,
22 was submitted to the Fiscal Intermediary for
23 payment. The patient was scheduled for a
24 morning appointment, but did not appear.

25 E. A service report dated February 16, 1971,
26 signed by respondent, representing a claim
27 for one hour individual psychotherapy pro-
28 vided to Marilyn W. on January 18, 1971,
29 was submitted to the Fiscal Intermediary for
30 payment. The patient was seen by respondent
31 for less than 30 minutes.

- 1 F. A service report dated May 12, 1971, signed
2 by respondent, representing a claim for one
3 hour individual psychotherapy provided to
4 Marilyn W. on April 27, 1971, was sub-
5 mitted to the Fiscal Intermediary for pay-
6 ment. The patient was seen by respondent
7 for less than 30 minutes.
- 8 G. A service report dated July 7, 1971, signed
9 by respondent, representing a claim for one
10 hour individual psychotherapy provided to
11 Marilyn W. on June 18, 1971, was submitted
12 to the Fiscal Intermediary for payment. The
13 patient was seen by respondent for less than
14 30 minutes.
- 15 H. A service report dated August 10, 1971,
16 signed by respondent, representing a claim
17 for one hour individual psychotherapy pro-
18 vided to Marilyn W. on July 23, 1971, was
19 submitted to the Fiscal Intermediary for pay-
20 ment. The patient was seen by respondent for
21 less than 30 minutes.
- 22 I. A service report dated May 9, 1970, signed
23 by respondent, representing a claim for one
24 hour individual psychotherapy provided to
25 Floyd L. on April 27, 1970, was submitted
26 to the Fiscal Intermediary for payment. The
27 patient was scheduled for 30 minutes treat-
28 ment and was seen for less than 30 minutes.
- 29 J. A service report dated July 6, 1970, signed
30 by respondent, representing a claim for one
31 hour individual psychotherapy provided to

1 Floyd L. on June 29, 1970, was submitted
2 to the Fiscal Intermediary for payment. The
3 patient was scheduled for 30 minutes treat-
4 ment and was seen for less than 30 minutes.

5 K. A service report dated May 11, 1971, signed
6 by respondent, representing a claim for one
7 hour individual psychotherapy provided to
8 Floyd L. on April 26, 1971, was submitted
9 to the Fiscal Intermediary for payment. The
10 patient was scheduled for 15 minutes treat-
11 ment and was seen for less than 30 minutes.

12 L. A service report dated June 7, 1971, signed
13 by respondent, representing a claim for one
14 hour individual psychotherapy provided to
15 Floyd L. on May 24, 1971, was submitted to
16 the Fiscal Intermediary for payment. The
17 patient was scheduled for 15 minutes treat-
18 ment, but did not appear.

19 M. A service report dated July 7, 1971, signed
20 by respondent, representing a claim for one
21 hour individual psychotherapy provided to
22 Floyd L. on June 4, 1971, was submitted to
23 the Fiscal Intermediary for payment. The
24 patient was scheduled for 30 minutes treat-
25 ment and was seen for less than 30 minutes.

26 N. A service report dated August 15, 1971,
27 signed by respondent, representing a claim
28 for one hour individual psychotherapy pro-
29 vided to Floyd L. on July 30, 1971, was
30 submitted to the Fiscal Intermediary for pay-
31 ment. The patient was scheduled for 15

1 minutes treatment and was seen for less than
2 30 minutes.

3 O. A medical treatment authorization and pay-
4 ment request, dated April 17, 1973, signed
5 by respondent, representing a claim for one-
6 half hour psychiatric evaluation and medical
7 supervision provided to Angelina C [REDACTED]
8 on March 5, 1973, was submitted to the Fiscal
9 Intermediary for payment. The patient was
10 seen by respondent for less than one-half
11 hour.

12 P. A medical treatment authorization and pay-
13 ment request, dated April 17, 1973, signed
14 by respondent, representing a claim for one-
15 half hour psychiatric evaluation and medical
16 supervision provided to Florence C [REDACTED] on
17 March 5, 1973, was submitted to the Fiscal
18 Intermediary for payment. The patient was
19 seen by respondent for less than one-half
20 hour.

21 Q. A medical treatment authorization and payment
22 request, dated April 19, 1973, signed by re-
23 spondent, representing a claim for one-half
24 hour psychiatric evaluation and medical
25 supervision provided to Edna M [REDACTED] on March 5,
26 1973, was submitted to the Fiscal Intermediary
27 for payment. The patient was seen by respon-
28 dent for less than thirty minutes.

29 R. A medical treatment authorization and payment
30 request, dated April 17, 1973, signed by re-
31 spondent, representing a claim for one-half

1 hour psychiatric evaluation and medical
2 supervision provided to Marjorie D [REDACTED]
3 on March 5, 1973, was submitted to the
4 Fiscal Intermediary for payment. The patient
5 was seen by respondent for less than thirty
6 minutes.

7 S. A medical treatment authorization and pay-
8 ment request, dated April 17, 1973, signed
9 by respondent, representing a claim for one-
10 half hour psychiatric evaluation and medical
11 supervision provided to Helen B. C [REDACTED] on
12 March 5, 1973, was submitted to the Fiscal
13 Intermediary for payment. The patient was
14 seen by respondent for less than one-half
15 hour.

16 T. A medical treatment authorization and pay-
17 ment request, dated April 19, 1973, signed
18 by respondent, representing a claim for one-
19 half hour psychiatric evaluation and medical
20 supervision provided to Floyd L [REDACTED] on March 9,
21 1973, was submitted to the Fiscal Intermediary
22 for payment. The patient was seen by respon-
23 dent for less than thirty minutes.

24 7. The above-mentioned in paragraphs 5 and 6 (A)
25 through (T) are a violation by respondent of sections 14107 of the
26 Welfare and Institutions Code as well as section 51470(a) of Title
27 22 of the California Administrative Code, and constitute grounds
28 for disciplinary action pursuant to section 2361(e) of the
29 Business and Professions Code.

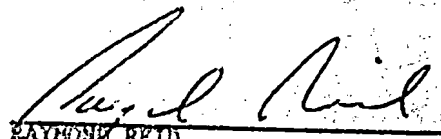
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WHEREFORE, it is prayed that the Board take appropriate
action.

DATED: 6/6/75



RAYMOND REID
Executive Secretary
Board of Medical Examiners
Complainant